

**JUL 26 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

YUKON-DELTA FISH MARKETING  
CO-OP, INC.,

Plaintiff - Appellant,

V.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 05-35788

D.C. No. CV-03-00074-RRB

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Alaska  
Ralph R. Beistline, District Judge, Presiding

Submitted July 21, 2006\*\*  
Anchorage, Alaska

Before: KOZINSKI, BERZON, and TALLMAN, Circuit Judges.

The U.S. Army Corps of Engineers exercised discretion as contemplated by the discretionary function exception to the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-2680, designing the Emmonak Riverbank Erosion

---

\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Project. Where mandatory, specific guidelines do not dictate a particular standard, design decisions constitute discretionary functions. *See Kennewick Irrigation Dist. v. United States*, 880 F.2d 1018, 1026-27 (9th Cir. 1989) (irrigation project design is protected as discretionary judgment); *see also Chaffin v. United States*, 176 F.3d 1208, 1211 (9th Cir. 1999) (even negligently made design decisions are discretionary, precluding government liability). The design decisions of the U.S. Army Corps of Engineers “involve[d] the permissible exercise of policy judgment.” *Berkovitz v. United States*, 486 U.S. 531, 537 (1988). Accordingly, the district court did not err in granting the defendant’s motion for summary judgment under the discretionary function exception to the FTCA, 28 U.S.C. § 2680(a), as a fault in the project’s design is the gravamen of the plaintiff’s complaint.

AFFIRMED.